The Assembly re-assembled at 8—4 P. M. Mr. S. Chattanatha Karayalar, Deputy-President presiding.

LEGISLATIVE BUSINESS.

THE TRAVANCORE DEBT RELIEF BILL—(continued).

DEPUTY PRESIDENT: Order, order. The House will now resume discussion of the Debt Relief Bill. We were at Clause 6 and amendment No. 80 was disposed of on the last occasion.

Clause 6.

The question that Clause 6 do stand part of the Bill was put.

MR. R. SAMBASIVA AIYAR (*Nominated*): Sir, I oppose the motion and I do not want to make a speech.

The question was put and carried.

Clause 6 was added to the Bill.

Clause 7.

The question that Clause 7 do stand part of the Bill was put.

MR. R. SAMBASIVA AIYAR: I oppose it.

The question was put and carried.

Clause 7 was added to the Bill.

New Clauses.

MR. R. SAMBASIVA AIYAR: I move, Sir, that after Clause 7 the following may be substituted as a New Clause renumbering subsequent clauses accordingly:

"Nothing contained in this Act shall apply to a debtor whose liabilities exceed Rs. 5,000."

This is a matter about which there has been considerable discussion in the Assembly. I do not therefore intend to make a speech. I commend my amendment for the acceptance of the House.

MR. M. SIVATANU PILLAI: I second it.

MR. KOTTALIL P. ABRAHAM (*Muvattupuzha* cum *Devicolam*): I oppose it.

MR. PADIYARA JOSEPH KUNJU (*Changanacherry* cum *Peermade*): I also oppose it.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Legal Remembrancer to Government*): Sir, it was repeatedly stated that Government have no idea of fixing any maximum for the debt to which this Act is to be applied. Consistent with that principle, I oppose the amendment.

The amendment was put to vote and declared lost.

Clause 8.

The question that Clause 8 do stand part of the Bill was put.

MR. R. SAMBASIVA AIYAR: I formally oppose it.

The question that Clause 8 do stand part of the Bill was put and carried.

Clause 8 was added to the Bill.

Clause 9.

MR. N. NARAYANA KURUP (*Ambalapuzha* cum *Shertalai*): Sir, I move—In Clause 9, sub-clause (1), after the words "any debt" insert

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[Mr. N. Narayana Kurup]

the words "as found on 23-5-1112 if it has been incurred before 1-1-1107 and a like percentage of the amount on the date of the Act if it has been incurred after 1-1-1107" and read the whole section.

With the amendment the Clause will read thus :—

"If 80 per cent of any debt as found on 23-5-1112 if it has been incurred before 1-1-1107 and a like percentage of the amount on the date of the Act if it has been incurred after 1-1-1107 together with future interest that may accrue thereon is repaid within 9 years from the date of the commencement of the act, the whole debt, notwithstanding anything contained in any law....."

The object of the amendment is to effect a greater reduction in the case of debts incurred before 1-1-1107 than in the case of debts incurred after 1-1-1107. I mean thereby that in the case of debts incurred before 1-1-1107 the 80 per cent. should be calculated on the amount found on 23-5-1112 and in the case of debts after 1-1-1107 the 80 per cent. should be calculated on the amount found on the date of the commencement of the act. With these observation I commend my amendment for the acceptance of the House.

MR. S. GOVINDA PILLAI (*Chirayinkil* cum *Nedumangad*) : I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI : I oppose it Sir. All the 8 clauses were framed on the assumption that the debt for purposes of this act would be the debt as it stands due on the date of the commencement of the Act. But the amendment proposes to put it back by at least 3 years before the date of commencement of the Act in respect of a large number of debts. This is going counter to the principles already adopted. After having been defeated in all the attempts to interfere with the principles underlying the Bill at the earlier stages, Sir, I think it is rather too late to bring forward this amendment at this stage.

The amendment was put to vote and declared lost.

MR. R. SAMBASIVA AIYAR : I move that in clause 9 sub-clause (1) the word "three" be substituted for the word "nine". I recommend my amendment for the acceptance of the House.

The amendment fell through for want of a seconder.

MR. N. NARAYANA KURUP : Sir, I move—

"In Clause 9, delete sub-clause (1), Provisos (a), (b) and (c) and sub-clauses (2), (2) (a) and (2) (b) and substitute the following instead :

" (1) If eighty per cent. of any debt, found on the date of this Act is repaid in eighteen equal half yearly instalments within nine years together with future interest that may accrue at each instalment," or

"(2) (a) If seventy-five per cent. of any debt found on the date of this Act is repaid on twelve equal half yearly instalments in 6 years together with future interest that may accrue at each instalment," or

"(2) (b) If seventy per cent. of any debt found on the date of this Act is repaid in four equal half yearly instalments together with future interest that may accrue at each instalment,"

the whole debt shall be deemed to be discharged ;

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Provided (1) that the first instalment is paid within 6 months from the date of this Act.

(2) Subject to the provisions contained in sub-section (3) each of the succeeding instalments is paid within 6 months of the date of the preceding instalment and (3) that no instalment is less than rupees ten".

Sir, during the discussion in the Committee, I think the Legal Remembrancer told us that 80 per cent. of the debt on the date of the Act will be taken and the whole interest for 9 years from that date will be calculated and the total amount thus found will be divided in instalments. If it is to be calculated like that, a person will have to pay interest on the portion of the capital he pays in the first or the second instalment for the rest of the period a second time. I shall illustrate with an example, the whole difficulty. Suppose for the sake of convenience that 80 per cent of a debt on the date of the commencement of the Act is Rs. 1,800. The total interest on that amount for 9 years at 4 per cent. will be Rs. 648. If the amount is paid in equal instalments as I suggested the total interest one has to pay will be only Rs. 346. Therefore the calculation as apprehended, will carry compound interest.

According to the idea given by the Legal Remembrancer on the amendment it would mean that Rs. 1,800 plus Rs. 648 as interest will be divided for payment in equal instalments. If Rs. 1,800 is to be paid in 18 half yearly instalments each instalment will carry Rs. 100 and interest will have to be paid by the debtor on that Rs. 100. For nine years interest will be only Rs. 346. If on the explanation given by the Legal Remembrancer the total interest for nine years is also added to the principal, the interest would work at 8 % per annum instead of 4 %. Therefore the Section should be made clearer.

Proviso (c) says that a debtor has to pay at each instalment not less than 7% of the debt. That means in 14 instalments the whole debt will stand discharged. That is to say within 7 years' time, the whole debt will be discharged. Whereas, within a period of nine years 18 instalments will have to be paid; if it is for six years 12 instalments will have to be paid and so forth. Therefore for the sake of convenience and for avoiding difficulties in the clause, it is better to allow a debtor to pay in equal instalments with interest that may accrue at each instalment

There may be one objection as pointed out by the honourable member Mr. E. Subramonia Aiyar. That is to say one person may have several debts and equal instalments will mean that he will have to pay a larger amount at the beginning of each instalment. If only a smaller percentage is allowed after paying one or two instalments, he gets some time within which he will pay the rest of the instalment. My submission is that instead of giving opportunity for different interpretations and avoiding difficulties, it is better to allow a debtor to pay in equal instalments according to the time allowed as nine years, six years or two years as the case may be. With these observations I commend my amendment for the acceptance of the House.

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MR. N. V. JOSEPH (*Minachil* cum *Thodupuzha*): Unless a debtor pays his first instalment within six months from the date of the passing of the Act, he cannot get the benefit of Section 9. In that case suppose he pays in eighteen instalments will it not take eighteen years to discharge his debts?

MR. E. SUBRAMONIA AIYAR (*Nominated*): Sir, I have an amendment to Section 9 which is comming further down

DEPUTY PRESIDENT: Is the amendment seconded?

MR. E. SUBRAMONIA AIYAR: But, I am not estopped from moving my amendment. I can move my amendment now.

MR. PUTHUPALLI S. KRISHNA PILLAI: This is a proposal to substitute a new clause for the existing clause 9. It deals with all sub-clauses. This may be put to vote. After that, all the existing amendments to clause 9 may be taken up later after seeing the decision of Mr. Narayana Kurup's new clause.

MR. PUTHUPALLI S. KRISHNA PILLAI: This Clause 9 was drafted by the Committee of the whole House. Before the honourable member makes a proposal to substitute a new clause, he must be able to convince the House that the existing clause is either insufficient or ambiguous or liable to wrong interpretation. Even if he is able to show that, the attempt ought to be to make such corrections as are necessary for the purpose of rectifying any apparent or obvious mistake. Without that, my honourable friend has brought forward a clause of his own. As he has not shown any reason why the existing clause 9 should be omitted, I am compelled to make a few observations as to why his amendment should not be accepted. It professes to have the quality of brevity and clearness. It will be found that from a legal point of view, it is inaccurately worded. If 80% of any debt, found on the date of this Act is re-paid .....How the word 'found', fits in with the rest of the clause is not very clear. It further States that it must be paid in 18 equal half yearly instalments together with future interest. Is the interest to be calculated on the whole debt or only on the "equal instalment" or in respect of any balance that remains to be paid, or in respect of 80% of the debt. According to him, the instalment payment should be equal. It should not be even a pie more than what is actually due. In other words, it shall be in eighteen equal half-yearly instalments. That means a debtor is prevented from paying even a rupee more which he has a mind to pay, which compels him to pay in mathematical proportion. The amendment of Mr. Kurup would mean that a debtor shall pay neither less nor more but only in equal portions. 80 % of the debt due should be paid in equal instalments together with interest, what interest? I do not know. Why should a debtor undergo all these difficulties in the matter of payment, I do not know. I seriously ask the question, why should one undergo all these difficulties in expressing his ideas? Let us provide in the Section a minimum for payment, leaving the maximum to be fixed by

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the debtor. His payment may always vary. In the place of a carefully worded provision, I do not think it is advisable to adopt the clause proposed by Mr. Kurup. I oppose this amendment. If there is any proposal for amending the existing clause, that may be considered.

MR. N. NARAYANA KURUP: May I know whether the interest for 9 years will be calculated on the date of the Act and added on to 80 % of the debt and the total will be divided for the instalments?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes.

MR. N. NARAYANA KURUP: Suppose I want to pay a debt in 9 years. Does the member mean that 80 per cent. of the debt together with 9 years' interest will have to be divided for payment in instalments?

MR. PUTHUPALLI S. KRISHNA PILLAI: There is no question of any division of any interest or of payment of the entire interest that will be accruing on the amount to be paid at the first instalment. It says, if 80 per cent. of the amount of any debt together with future interest that may accrue thereon is repaid within 9 years from the date of the commencement of the Act, the whole debt shall be discharged.....If 80 per cent. of the debt together with interest that may accrue thereon..... What can it mean? Let us examine it. If 80 per cent. is repaid within 9 years together with interest that may accrue thereon, then the whole debt is discharged Where is the difficulty? The honourable member tries to misinterpret it. If he does so I am prepared to defend it.

MR. N. NARAYANA KURUP: Suppose 80 per cent. of the debt on the date of the Act is Rs. 100. Does the member mean that Rs. 100 plus 9 years' interest amounting to Rs. 86 will have to be divided in instalments. Is that what is meant by the honourable member?

MR. PUTHUPALLI S. KRISHNA PILLAI: The wording is clear. 80 per cent. of a debt together with interest that may accrue thereon if paid within 9 years, then the whole debt is discharged. I do not know where the difficulty lies. And moreover, payment has to be made in instalments as provided under the clause.

MR. N. NARAYANA KURUP: I shall take a concrete case. 80 per cent. of the debt on the date of the Act is Rs. 100? Within 9 years the amount by way of principal and interest is Rs. 136. May I know whether that amount will be divided for payment in 18 instalments? Or, whether 7 per cent. of the reduced debt on the date of the Act according to the clause with 4 per cent interest that may accrue at instalment that has to be paid. What does the member mean by the provision in clause 9?

MR. PUTHUPALLI S. KRISHNA PILLAI: It is not a question of what exactly is meant by me. It is a question of what exactly the clause means. My meaning would not satisfy the members unless they concede to me the power to interpret it. What is the natural meaning of this clause. My position is if 80 per cent. of a debt is paid together with interest that may accrue thereon—the word "may" is significant—the debt is discharged. Suppose Rs. 100 is the principal and interest

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realisable on the date of the commencement of the Act and that Rs. 70 is the principal and Rs. 30 is the interest. If 80 per cent. of the debt, that is Rs. 80 is paid together with interest that may accrue thereon—on what will the interest accrue? It will accrue on the principal sum. What is the principal sum? It is Rs. 70. Clause 11 provides that notwithstanding anything contained in any law, contract, or decree of court to the contrary, no interest exceeding 4 per cent. per annum shall accrue in respect of any debt. Interest will not accrue on interest. If that is so the clause provides for interest which may accrue in respect of any principal that remains due. Payment made will be appropriated towards interest and principal in the same manner in which it is done at present.

MR. E. SUBRAMONIA AIYAR: The explanation offered by the Legal Remembrancer has created a similar difficulty for me also. Till that explanation was offered I did not feel any difficulty. I do not want to take it in a light way. The explanation offered by the Legal Remembrancer is this. The idea, or rather the intention expressed in that Section, as pointed out by the Legal Remembrancer is this. On the date the Act comes into force say there is a debt consisting of Rs. 70 principal and Rs. 30 interest. I do not say Rs. 36 because I am aware of Section 11 which says that interest shall not exceed half the principal. If that is so, the Legal Remembrancer says the concession given to the debtor is this. His liability is to pay 80 per cent. of Rs. 100 (Rs. 70 plus Rs. 30), Rs. 80 plus the interest on the principal amount Rs. 70. In a series of years the principal will be proportionately reduced. On the first instalment let us take 7 per cent. The debtor will have to pay 7% plus interest on Rs. 70 for six months. For the next instalment he will have to pay 7 per cent. of Rs. 70. That is all and so on and so on until the amount comes to Rs. 80 plus the interest on these series of principal from time to time. To make myself still clearer I would invite the attention of the House to Section 9, sub-clause (c)—

> "except in the case of the last instalment the amount paid at each instalment is not less than seven per cent. of the debt subsisting at the commencement of the Act or less than rupees ten whichever is larger".

So, the instalment payment is a certain percentage of the debt subsisting at the commencement of the Act and a reference back to Section 9, says that it is 80 per cent. of the amount of every debt. So the debt here and there must be the same thing. As I read the section first it conveyed to me this idea. What is the debt on the date of the Act—principal and interest put together, Rs. 100 principal and interest together. The obligation of the debtor is to pay 80 per cent. of that debt. That is Rs. 80. If the liability on the date of the Act is Rs. 100, the Act says that you shall pay Rs. 80 if your idea is to pay it in nine years. You shall pay 75 percent if your idea is to pay within six years and seventy per cent. if your idea is to pay in

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two years. So the debt is invariably cut down from Rs. 100 to 70 and what you are to pay in each instalment is a certain percentage of that debt viz., Rs. 100. But the explanation of the Legal Remembrancer seems to be that there is a larger concession shown to the debtor. I am not here questioning the principle. If the total amount—principal and interest—comes to Rs.100 the amount which the debtor has to pay apart from interest is Rs. 80 or Rs. 70. The doubt is in respect of the interest. Interest according to the Legal Remembrancer should be only on the principal and not on the Rs. 80, Rs. 75 or Rs. 70 as the case may be. If that be so, I would say that the wording has to be modified because it is stated that a debt means only the principal and not the interest. That was not the idea of the House. But apart from that explanation as it stands, I do not find any difficulty at all. It means this. There is nothing wrong because there is no question of interest being paid on interest. What is the debt on the date of the Act? Interest is also a part of the debt. "Debt" means any liability in cash or kind, whether secured or unsecured, due from any person whether payable under a decree or order of a Civil or Revenue Court or otherwise". So, on the date of the Act, the debt is the total amount due from the debtor to the creditor. Call it by any name you choose. The debtor can pay 70 per cent., 75 per cent or 80 per cent in two years, 6 years or 9 years as the case may be. Interest will have to be paid on the sum remaining due on any date. That is the idea. In that case there is no difficulty at all. If the Legal Remembrancer wants to carry out the other intention also I would humbly request him to think over the matter more carefully and make suitable amendments in the section by making it clear that the interest has to be calculated only on the principal and not upon the 80 or 70 per cent. of the principal.

So far as the amendment is concerned, my friend Mr. Kurup had a discussion with me on the matter. The idea is that when time is given to the debtor he must be in a position to discharge his debt within that time. It is not a question of discharging a single debt, but two or three debts. The Act says he has to make up his mind within six months from the commencement of the Act. He has to give an application within six months and make a payment if he is to get the benefit. There may be several creditors and seven or any other per cent. of the entire debt not only due to one individual but due to several will have to be paid within six months. So it is better that the first instalment is made as small as possible. Later on he can negotiate with the creditors and clear his debts by sale of his properties and thereby pay up the debts in instalments.

So the Section as drafted by the Legal Remembrancer gives more facilities for the debtor to take advantage of the provisions of the Act. And in this matter our attention should not be concentrated merely upon the first portion *i. e.*, the 80 per cent. Whether it is 80 per cent. or 70 per cent. it does not matter. It is only an attempt to test the sincerity or genuineness of the intending debtor to avail himself of the provision of the Act. If he wants relief let him make an application

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and pay at least 7 per cent. of the debt. He need not say in his application that he is going to pay in a stipulated period of time, say, 9 years or 6 years. The amount of debt is a fixed amount and the percentage he has to pay is also fixed. But the amendment proposed by Mr. Kurup needs improvement. It stipulates the period on which the debtor is intending to pay. In this case difficulties may arise later. He may be unable to pay within the stipulated period, say, within 6 years. Is it open to remitter to claim a larger period? But under the section as it stands now after making three payments a debtor clears the whole debt by paying the fourth instalment or he may continue it for another six years or 9 years as the case may be. So if the amendment in the form suggested by Mr. Kurup is to be accepted the debtor should be asked to say definitely in what time he proposes to pay the instalments. If the debtor has agreed to pay the debt in a fixed period according to the provisions of the Act then the Court will not be able to give him further time. It is to avoid this difficulty that the Legal Remembrancer fixed a percentage of the debts existing at the commencement of the Act to be paid by the debtor to get the benefit of the provision. It does not matter whether the balance is paid within six years or two years. The question of interest and all those matters should be taken into account when finally the whole claim is settled. Then if 80 per cent. of the debt with future interest that may accrue thereon is paid within nine years the whole debt is discharged. There is no question of interest when you pay the 7 per cent. To clear the whole debt of 80 per cent. it may exceed six years or even nine years. So with the regard to the application of the Section there is no difficulty. The intention of the Legal Remembrancer is that the interest should be calculated only upon the principal existing on the date of the commencement of the Act and I believe that some further changes should be brought about. With these words I oppose the amendment.

MR. KOTTALIL P. ABRAHAM: Clause 12 provides for future interest at the simple interest rate. Clause 9 (1) (*c*) calculates and fixes the entire debt. Clause 9 (1) charges interest on the reduced per cent of the debt. Putting together all these clauses, does the difficulty pointed out by the honourable member arise?

MR. E. SUBRAMONIA AIYAR: I tried my best to explain it. I said that the interest is on the amount remaining unpaid. Suppose there is Rs. 100 as principal and interest. You have to pay 80 per cent. of it to clear off the debt. If you pay Rs. 10 within six months the interest that you have to pay will be six months' interest on Rs. 80. No future interest will be calculated because the Section says in sub-clause (*c*) "the amount paid at each instalment is not less than 7 per cent. of the debt subsisting at the commencement of the Act." Interest is determined at the last instalment *i. e.* 4 per cent. interest on Rs. 80, 75 or 70 as the case may be. I congratulate the Legal Remembrancer

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for the most simple way in which the Section has been framed. If you ascertain the debt on the date of the commencement of the Act and this you can do without the help of a lawyer or a Mathematician, all the other things that follow are made easier. With these words I oppose the amendment of Mr. Kurup because the amendment will take away the facilities afforded to the debtor for payment of his debt.

MR. C. JEBAMONY NADAR : Should not the words in sub-clause (1) as in the amendment "that may accrue" be changed into" that may accrue in accordance with the law."

MR. E. SUBRAMONIA AIYAR . If 80 per cent. of the amount of any debt with future interest "that may accrue thereon". "Thereon" means "on that". On what? The debt referred to there. That is, the debt subsisting on the date of the commencement of the Act.

MR. C. JEBAMONY NADAR : But by law do we not calculate interest only on the principal and not on the accumulated sum of principal and interest?

MR. E. SUBRAMONIA AIYAR : The interest referred to here is not on the 80 per cent. of the amount that may accrue. 80 per cent. of the debt does not mean, according to me, 80 per cent. of the principal of the debt. That is, 80 per cent. of the principal and interest together. The interest thereon means the interest on that 80 per cent. of the debt.

MR. C. JEBAMONY NADAR : It is stated "80 per cent. of the amount of the Debt" it is not 80 per cent. of the amount of any debt.

MR. E. SUBRAMONIA AIYAR : "The amount of any debt" is an understandable term. The lawyer's interpretation is the layman's interpretation unless the layman's interpretation will lead to any absurdity.

MR. P. NARAYANA PILLAI : Certain debts are referred to the Conciliation Boards. I want to know whether the word "debt" means the original debt before filing the suit or the debt which has accrued after the filing of the suit.

MR. E. SUBRAMONIA AIYAR : I should not generally advise without sufficient good progress. It must be the interpretation of Section 3. If you treat it as a new debt the Act will not apply. If you want to treat it as an old debt the Conciliation will have no effect. That is a matter which may arise for discussion in a court of law.

MR. N. NARAYANA KURUP : It is stated in the provision that "7 per cent. of the debt subsisting at the commencement of the Act". According to your interpretation we understand that 80 per cent. is only.

MR. PUTHUPALLI S. KRISHNA PILLAI : Before the honourable member begins to speculate I may say that the 7 per cent. fixed in the Clause is the 7 per cent. of the debt due at the commencement of the Act. It is 7 per cent of that amount of the debt or a sum not less than Rs. 10. If there is a dispute the Court can decide it if it is placed before the Court. If it is a matter between the parties concerned they

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can agree to any terms which will not be inconsistent with the express provisions of the Act. You can pay more but not less than the 7 per cent. of the debt. You are at liberty to decide whether you would pay in two, six or nine years, but as you are not bound to disclose your intentions, you may revise your decision within the said periods.

MR. M. SIVATANU PILLAI: What is the rate of interest for the future payments?

MR. PUTHUPALLI S. KRISHNA PILLAI: 4 per cent. on debts to which the Act applies. Suppose a debtor desires to secure the benefit of the 30 per cent. reduction, and makes payment in accordance with the provisions of this section. If within two years he does not pay 70 per cent. he can pay the balance that would make up 75 per cent. and claim reduction of 25 per cent. If even within the six years' period your fortune does not smile on you, and you have to toil on, do so and get a discharge by paying 80 per cent. of the debt. You are not bound to a definite period. That is the one great merit of the principle contained in clause 9 and it has been deliberately drafted in this manner. If it is as suggested by Mr. E. Subramonia Aiyar, that if you pay 7 per cent. you will not have to carry it on for nine years and, therefore, the percentage must be reduced in order that you may get the full benefit, then it is an entirely different matter. I am prepared to discuss that aspect also.

MR. P. C. ADICHAN: സർ, ഈ ബില്ലിലെ ചില തത്വങ്ങളെ.

DEPUTY PRESIDENT: Are you moving a motion? You cannot do so now.

The question that " In Clause 9, delete sub-clause (1), provisos (*a*) (*b*) and (*c*) and sub-clause (2), (2) (*a*) and (2) (*b*) and substitute " the clause proposed by Mr. Narayana Kurup, was put to vote and lost.

MR. E. SUBRAMONIA AIYAR: Sir, the amendment which I desire to move is rather a short one. That is to say "In Clause 9 sub-clause (1) (c) for the word "seven" substitute the word "five". Sir, my intention is to delete the word seven and substitute the word 'five'. The object of the amendment is not to reduce the amount, payable at each instalment, but the removal of the word 'seven' as it presents us with some difficulties. When it is seven per cent., a certain difficulty arises. I shall take an illustration—the illustration that I have already given. On the date of the Act, let us say, there is a debt of Rs. 100, principal and interest being taken into consideration. The Act says that a debtor will get an acquittance if he pays Rs. 80, with the future interest that has accrued thereon, within 9 years, or, in other words, in 18 instalments. That is, Rs. 80 with future interest can be paid in 18 instalments. Let us forget interest for the present, because, so far as this section goes, interest is a matter of settlement finally. Now, Rs. 80 is

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the debt which you have ultimately to pay to get a discharge. It is not asking to pay Rs. 80 immediately. Your debt is Rs. 100 and you are called upon to pay 7 per cent. of that debt in 18 instalments, there being no question of interest at all. You just pay Rs. 7, again pay Rs. 7 and go on making payments for a certain period. But, if we pay for 12 instalments, the amount paid will be Rs. 84 and the period within which the amount is paid will be six years. Then the question might arise: "Will not the debt be discharged?". We have now paid twelve instalments of Rs. 7 each and let accounts be settled on that debt on the 12th instalment. What will be the amount due to me? I have paid Rs. 4 more. All that you have to do is to calculate interest on this Rs. 80 for the first six months at 4 per cent, on Rs. 73 for the next six months at 4 per cent. and on Rs. 66 for the next six months at the same rate and so on. When you calculate the interest, I am prepared to concede that it will come to more than 4 per cent. I daresay that we need not go up to eighteen instalments. You need not go beyond the fourteenth or fifteenth instalment. I can positively say that you need not go up to the eighteenth instalment. By paying Rs. 7 every instalment at stated intervals of six months, you will come to a stage before the 9 years is exhausted, when the 80 per cent. and the interest thereon will be completely paid. This will make it impossible for a man to avail himself of the provisions under the 9 years' term. In order to obviate this difficulty, to err on the safer side, I have brought in this amendment.

DEPUTY PRESIDENT: Has it been worked out mathematically that by payment at seven per cent., the whole debt will be paid within nine years?

MR. E. SUBRAMONIA AIYAR: My illustration is clear. If you take the illustration I have made, it will be seen that before the sixteenth instalment is over you will have paid 80 per cent. and the interest that might have accrued thereon. It is fifteen or sixteen instalments—I have not worked out; but the debt will be discharged long before this nine years. It may be seven or eight years. Anyhow, the period falls short of the nine years if the percentage at each instalment is fixed as seven. I dare say that making this instalment amount seven per cent., the debt will be wiped out before the expiry of the nine years. It is to obviate that difficulty, which I did not notice at the first instance, that I have placed this amendment for your consideration, and I hope that the Legal Remembrancer will have no objection in this matter if he is convinced that this difficulty will arise.

MR. PADIYARA JOSEPH KUNJU: Sir, I second the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I made some calculations on this matter and at the time this percentage was fixed, it was understood that a payment of seven per cent. of the total or equivated payment of the total debt during a period of nine years, in 18 instalments, will alone discharge a debt reduced in the manner provided in the Bill. Subsequently a doubt was expressed (after the Bill was published) by some honourable members that if 7 per cent. of a debt is thus

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[Mr. Puthupally S. Krishna Pillai]

paid, then by payment of the 7 per cent. continuously for 14 instalments the debt will be discharged. There is some force in this contention.

MR. M. SIVATANU PILLAI: It would be still less.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes. So a period of seven years, or 14 instalments spread over a period of seven years is the time within which a debt will stand discharged if payment is made at the rate of 7 per cent. Even though I was not fully conscious of this difficulty at the time the above percentage was fixed, I found that there was nothing unreasonable in it, because of the amendment made in one of the subsequent clauses. That is where it provides that the debtor shall be entitled to three continuous defaults. If that is so, one and a half years" time should also be added. In six years' time 80 per cent. will be covered and a further one and a half years is necessary for payment of interest. Afterwards when this matter was being discussed I was thinking over it. If really the debt will stand discharged before that period there will be some incongruity in the provision. To allow a debtor nine years' time to discharge his debt and then to compel him to complete payment within a shorter period will be unreasonable, but you will have to take the default period also into account.

MR. K. P. ABRAHAM: Will the debtor get the maximum benefit?

MR. PUTHUPALLI S. KRISHNA PILLAI: He will get the full nine years and nothing more. If he is able to pay it earlier he can pay it; if otherwise he wants to prolong payment he can prolong it for nine years.

MR. C. JEBAMONY NADAR: Is there not any consideration for small debts?

MR. PUTHUPALLI S. KRISHNA PILLAI: As I said, in the case of small debts of 100 or 150 rupees, instalment payment will not be less than ten rupees. In such cases the debt will be discharged in six years' period. You cannot drag it on for nine years. He at the same time gets the benefit of the larger percentage reduction. I do not think that it is likely to lead to any great difficulties or incongruities if 7 per cent. is directed to be paid.

MR. P. S. MUHAMED: That will create difficulties.

MR. JOSEPH VITHAYATHIL: According to the section if you want to get a reduction of 20 per cent. we must pay the debt within nine years. There is no question of payment in percentage. Unless a person pays the last instalment also to completely wipe out the debt he will not get any advantage. We must take care to see that the debtor is given the full time of nine years. The question is whether he will be deprived of that concession if a minimum is fixed for payment. There is no meaning in not paying any amount for whole years. The whole debt has to be given in a period of 9 years. So any explanation towards fixing a minimum is not satisfactory. We can understand it if it is to make a more equitable provision than over eighteen instalments.

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MR. N. V. JOSEPH: The debtor will get any benefit only if the whole debt is wiped out and not otherwise. Hence if an instalment is defaulted it will only accumulate and add to his burden.

DEPUTY PRESIDENT: Mr. E. Subramonia Aiyar, you are not entitled to reply. But if you want permission it may be given.

MR. E. SUBRAMONIA AIYAR: The legal Remembrancer, Sir, points out that this does not stand in the way of any debtor taking advantage of the nine years' time given. Let me say that let a debtor pay eleven instalments consecutively, and then let him not pay the twelth one. Then if in any instalment a default is made, such default will be continued. Let me pay the twelfth instalment, something more remains to be paid. He wants to take advantage of the provision of nine years. He shall not pay the twelfth instalment. Immediately the creditor will sue him. Is that the object? Certainly we cannot bear that. If he does not pay not only he forfeits but there is a penalty. Some pay, say, two instalments and the third time he does not pay but waits for a subsequent chance. We can get over all these difficulties by saying let him discharge the debt in nine years and let him make any payment in any number of instalments. Well, in making law we should not give a premium to any debtor by law. You have given a statutory and inviolable right to pay money in eighteen instalments covering over nine years. You can pay a larger amount in two years and sleep for a part of the remaining period. It is enough if you pay in nine years. But you have to pay a larger amount and then default thus exposing yourselves to penalty. No-doubt if this remains unnoticed the law will probably be administered in the form in which it is contained here. But once it is noticed why should we leave room for default to be made by the debtor in order that he may get an advantage. So I believe that the Legal Remembrancer will persuade himself to bring into the section this principle, namely, payment in eighteen equal instalments. With these words, I again request the Legal Remembrancer to accept the modification. Let not some other person take advantage of our provisions. What is the use of saying 80 per cent and all that. All these people know Arithmetic. If seven per cent is not enough I would ask ten per cent. But this is my difficulty. Let not legislators during night work out hasty reforms. Let all these things escape our notice. But after noticing it, it will be a case for much mental anxiety or pain or distress for any-body. Practicaliy it may not hurt, but there is this thing here, *i. e.*, Legislating. That is an error and that certainly is a matter upon which I think the Legal Remembrancer will most gladly accept the amendment.

MR. PUTHUPALLY S. KRISHNA PILLAI: I wish to make a suggestion to the honourable mover. No-doubt if five per cent is paid and if in nine years' time the whole amount is discharged he will get the benefit contemplated. If five per cent is paid in eighteen intalments it is not possible to discharge the whole debt in nine years' time.

MR. E. SUBRAMONIA AIYAR: Let him wipe out the debt with the last payment. Smaller payments may be made to begin with and the last payment on the eighteenth instalment should be enough to cover all the balance and ask the debtor to discharge the debt. So my amendment is quite in order with the subsequent amendment of the Act.

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MR. PUTHUPALLY S. KRISHNA PILLAI: A minimum, if proposed, should be such as to cover the whole amount in the period of nine years and in eighteen instalments. It is for that purpose a 7 p. c. minimum is fixed. If he wants to pay in two years' time he may pay the amount and get greater advantage. But to take advantage of the provision he must pay, and pay the minimum. That minimum should in no way be less than the amount which if paid in eighteen equal instalments will cover the whole debt. So I am suggesting to the member whether a minimum of six per cent may not be fixed. Payment at the rate of 5 per cent will not clear the whole of the debt in 9 years. 5·6 per cent of the amount will be the actual equated payment.

MR. E. SUBRAMONIA AIYAR: For the first seventeen instalments, the payment will be Rs. 6 and the last payment will be a few rupees less than Rs. 6.

DEPUTY PRESIDENT: Is 6 per cent acceptable to the Legal Remembrancer?

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, Sir.

The amendment of Mr. E. Subramonia Aiyar that in sub-clause (1) (c) for the word "seven" the word "six" be substituted was put to vote and declared carried.

MR. PUTHUPALLY S. KRISHNA PILLAI: I move—

> "In Clause 9, sub-clause (3) (b) between the words 'three consecutive instalments' and the words the 'debtor' the words 'or the last instalment' shall be inserted."

The sub-clause reads—"If subsequent to the payment of the first instalment, default is made in the payment of three consecutive instalments, the debtor shall....." Instead of that I want the following—"If..... .....default is made in the payment of three consecutive instalments or the last instalment," the debtor shall not be entitled to claim the benefits of this provision.

The right to default three instalments is likely to be interpreted as controlling the period prescribed in the main provision; because the proviso reads as follows:—

> 'Subject to the provisions contained in sub-section (3) each of the succeeding instalments is paid within six months of the date of the preceding instalment.''

The period of nine years prescribed in the main sub-clause (1) is subject to the proviso (*b*) and proviso (*b*) is again subject to clause (3) and in sub-clause (3) (*b*) it is said that if default is made in the payment of three consecutive instalments, the debtor shall not be entitled and so on. Any way, our idea is that a debtor shall have the full nine years' period but that period should not under any circumstances be extended. It was on that understanding that the three periods of three, six and nine were fixed. I am only making that position clear. A default can be within the first and the last instalments. To put it bluntly, if a debtor pays all the 17 instalments and defaults to pay the 18th instalment, he will not be entitled to the benefits of the Act nor will the period be extended. That is the result of the amendment. The amendment does not make any difference at all in the meaning of

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the clause as originally understood and this amendment is made by way of abundant caution, so that the provision for the nine years' period may not be interpreted as having been extended by another one and a half years.

MR. A. GOPALA MENON (*Director of Public Instruction*): I second the amendment.

The amendment was put to the vote of the House and was declared carried.

MR. S. NARAYANA PILLAI (*Quilon* cum *Kottarakara*) : I demand a poll.

MR. M. SIVATANU PILLAI: There was no opposition and hence there is no necessity for taking a poll.

MR. E. SUBRAMONIA AIYAR : I move—

In Clause 9 after sub-clause (4), add the following as sub-clause(5):

"If a creditor refuses to accept payment of any amount made in accordance with the provisions of this section the debtor may within thirty days from the date of such refusal apply to the court to have such amount deposited for payment to the creditor and such deposit shall be deemed to be a valid payment under this section.

EXPLANATION: The court for purposes of this sub-section shall be the court prescribed under Section 15."

So far as Section 9 is concerned, it says what rights a debtor has; that is, he need pay only a particular percentage of the debt in one or more instalments. Suppose the debtor takes the money to the creditor and the creditor does not receive it. What is to be done? Is the offer of payment equivalent to payment ? The substantive law says that if money offered is not accepted by the creditor, the offer will be sufficient to exonerate the debtor from default. In other words the tender of money will be an excuse for non-performance. The debtor may have an excuse for non-payment, but where is the provision for giving the debtor relief on that account ? Our object is to avoid litigation as far as possible, not to enable either the debtor or the creditor to adopt dilatory tactics to evade payment and finally come to the court with all the attendant delays and leave it open to other people here and elsewhere to challenge the procedure of our courts and throw blame upon the lawyers, advocates and the clientele. The complaint is often made that our courts are not energetic enough. The other day the Dewan-President himself said that a good deal of the delay in courts is due to lawyers. That apart, in order that the same accusation may not come hereafter, the proposed legislation being a relief measure, relief must be had, cut and ready. So, if the creditor refuses to accept the payment, the amendment proposed by me enables the debtor to make the payment into court, and there will be no dispute between the creditor and the debtor. I am not very particular about the period within which this payment should be made in court. Let it be 15 or even ten days after the refusal to receive the amount by the creditor. I am willing to accept any suggestion that will modify this period. My object in

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[Mr, E. Subramonia Aiyar.]

bringing this amendment is to avoid the creditor refusing to receive the money and then put forward the plea that no offer was made. Also, it should not happen that the debtor without taking the money to the creditor puts forward a false plea that he made an offer of payment but that the creditor refused to receive it. I am not making any accusation against the creditor. Let there be some other way of making the payment. Payment may be made directly into the hands of creditor and an acknowledgment may be got from him that the payment is made in accordance with section 9, or payment may be made into court stating that the money is paid on such and such an account as the creditor refused to accept the same.

MR. C. JEBAMONY NADAR : What will be the effect of this amendment on Clause 15?

MR. E. SUBRAMONIA AIYAR : This amendment will not touch Section 15 at all one way or the other.

Section 15 deals with the power of court to adjudicate on disputes and doubts arising between a debtor and creditor with respect to the burden of debt and not with respect to payment made under Section 9. In case a creditor refuses to accept payment, there must be some agency to say that such a thing happened. If a debtor wishes to make payment, let him deposit it in a court. But before doing so let him give a notice to the creditor of that intention. It is only with that object, I am moving the amendment. I do so on behalf of the debtor as well as creditor in the matter. No doubt. by making this amendment, I am not safeguarding the interests of my class. Only as legislator I take interst and has therefore proposed such an amendment. By my class, I mean the lawyer class. That is the principle involved in my amendment. Let him take 30 days or 20 days or even 15 days for depositing the amount. In this respect, I am prepared to accept any suggestion from any member. The only thing needed is. that there must be an agency to receive the money. I have suggested that. Then there is an Explanation added on to this sub-clause which reads.—

> "The court for purposes of this sub-section shall be the court prescribed under Section 15".

Whether the payment is made in a Munsiff's court or District Court does not matter.

MR. M. L JANARDHANA PILLAI : I second the amendment.

MR. PUTHUPALLY S. KRISHNA PILLAI : I wish to know in the case of co-operative awards, what is the court, that can take cognisance of this matter according to the Explanation?

MR. E. SUBRAMONIA AIYAR : So far as co-operative awards are concerned, they are enforced as decrees. But if the question had been about co-operative debts which have not matured into awards, then there is something to answer. It is for that purpose I have suggested the Explanation,

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MR. PUTHUPALLY S. KRISANA PILLAI : Different provisions are made under Section 15. If the debt is covered by a decree the application shall be made to the court or authority which passed the decree; if the debt is not covered by a decree, the application shall be made to the court or authority competent to pass a decree. All these relate to the recovery of debt. How does the amendment fit in with the above provision.

MR. E. SUBRAMONIA AIYAR : All that I want by the amendment is that the debtor should be enabled to pay in the court. The Legal Remembrancer may make any modification in the amendment to bring out that idea. For purposes of payment, I invoke the authority of the court. For making an application it is a different matter.

MR. PUTHUPALLY S. KRISHNA PILLAI : Then I will modify the amendment thus:

"The court for purposes of this sub-section shall be the court competent to entertain a suit for the recovery of the debt".

MR. E. SUBRAMONIA AIYAR : I agree.

The amendment No. 115 was then put to vote and carried.

MR. R. SAMBASIVA AIYAR : Sir, I move the following amendment :— In Clause 9, add the following as a new sub-clause :

"Notwithstanding anything contained in the previous sub-section the amount of the reduced debt shall in no case be less than the principal amount of debt outstanding on the date of the Act".

If reduction is made as contemplated in clause 9, it is very clear that the amounts covered up by documents calculated from the year 1110 would undergo a cut and would be much less than the principal. By my amendment, I want to see that the amount shall in no case be less than the principal.

MR. M. SIVATANU PILLAI : I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI : I oppose the amendment. It was stated over and over again that whether it be of the principal or the principal and interest outstanding due on the date of the Act, a debtor shall be entitled to have a discharge if he pays 80 per cent. or 75 per cent. or 70 per cent. as the case may be, as provided under Section 9. It was repeatedly stated by me that there may be cases in which the principal amount itself would be reduced and in the case of debts in respect of which a large portion by way of interest has been paid, it may not work any real hardship. But there may be some cases where real hardship will be caused. It was not without consciousness of this fact that this proposal was made. Even in such cases, by providing that this Bill does not apply to debts incurred after 23rd Dhanu 1112, we have reduced the hardship to the minimum possible. It was understood by the House throughout the deliberations of the Select Committee, that this would be the result. It is not now possible to go back on that principle. Therefore I oppose the amendment.

The amendment was put to vote and lost.

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Amendment No. 117.

MR. R. SAMBASIVA AIYAR :. Sir, I move the following amendment: In clause 9, add the following as a new sub-clause:

"Notwithstanding anything contained in the previous sub-sections, the amount of the reduced debt together with earlier payments, if any, made towards the debt shall in no case be less than the principal sum actually advanced."

MR. C. JEBAMONY NADAR : I second it.

MR, PUTHUPALLY S. KRISHNA PILLAI : For the reasons suggested in the previous amendment I oppose this also.

The amendment was put to vote and lost.

MR. R. SAMBASIVA AIYAR : Sir, I move—

In Clause 9, add the following as a new sub-clause :

"Whenever a debtor claims the right to pay in instalments under the section, he shall, if so required by the creditor' furnish security for the whole debt, or such security as he is capable of furnishing."

The amendment was not seconded.

DEPUTY PRESIDENT The question is that clause 9 as amended do form part of the Bill.

MR. R SAMBASIVA AIYAR : I oppose the proposition.

The motion that clause 9 stand part of the Bill was then put to vote and carried.

The clause was added to the Bill.

Amendment No. 123.

MR. R. SAMBASIVA AIYAR : Sir, I move that the following amendment :—

Re-number Clause 10 as sub-clause (1) to Clause 10 and add the following as sub-clause (2) :

"In computing the period of limitation prescribed by the first schedule to the Travancore Limitation Act VI of 1100, for every suit instituted and application made after this Act, the time during which a debtor could take advantage of the provisions of section 9 of this Act shall be excluded".

It may be that the time of limitation may bar the rights of the creditor by the time the debtor takes advantage of Section 9. When the debtor commits a default in the payment of the money he will have to institute a suit so that the period of limitation may not be barred. The object is to protect the rights of the creditor for the period during which the debtor takes advantage of the provisions of Section 9.

MR. E. SUBRAMONIA AIYAR : I am just saying a few words in support of this amendment. My apprehension is not that the suit becomes barred because Section 10 says :

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"Nothing contained in Section 8 or Section 9 shall be deemed to affect the powers of a Court under the Code of Civil Procedure, 1100, or the rights of a creditor to institute a suit for the recovery of his debt".

I must certainly admire the superabundant caution and the width of vision of the Legal Remembrancer in making provision to cope with the attempt of any recalcitrant and dishonest debtor. "Nothing contained in Section 8 or Section 9 shall be deemed to affect the powers of a Court" In relation to what matters it does not say, powers—ordinary, extra-ordinary, and otherwise. If a man is going to remove his assets after claiming payment in instalment himself and in the interim he divests of any of his properties, the creditor will have no time to exercise his right. I do not want to expatiate on that matter. "Or the rights of a creditor to institute a suit for the recovery of his debt". Even if a debtor makes an application and makes payment regularly, that does not stand in the way of a creditor instituting a suit for the recovery of his debt during the period his debt is likely to be time-barred. For instance, say, the debt is dated 1042. It is an hypothecation debt. There is no acknolwedgement; the Act will come into force on 1st Chingom 1116. Even within six months after the passing of the Act the debtor does not pay. Under such a circumstance, this Act does not stand against the creditor filing a suit. What does the Section say? Even though the creditor has instituted a suit and obtained a decree, the execution of the decree shall not be in contravention of the said section. So the creditor apprehends that his claim is becoming barred. He has not to stand or sit quiet even if the debtor is making payments. If he does not want to waste his money it is better to get an acknowledgement signed by the debtor. If the debtor is not amenable to that, in respect of any payment made towards the discharge of any debt—principal or interest by the debtor or his agent an acknowledgement in writing and signed by him is obtained, Section 20 comes to his rescue and the creditor can institute a suit. So it is not on that account that I am supporting the amendment.

If this state of affairs continues and if the creditor is put to the necessity of instituting a suit unnecessary expenses will be incurred He will have to incur the Court expenses. To avoid this a provision that a payment under Section 9 will give rise to a fresh starting point of limitation may be made. Some such short cut may be made. To save the creditors from unnecessarily going to the court and incurring extra expenditure, some suitable provision may be made. Viewed in that respect, this amendment or any other suitable amendment to mean that any payment under Section 9 will make it a fresh starting point for limitation may be made. I leave the wording of the amendment to the House. With these words I support the amendment.

MR. PUTHUPALLY S. KRISHNA PILLAI: I oppose the amendment. The new clause added to the Bill by the Select Committee was intended to cover the case pointed out by Mr. Sambasiva Aiyar. In a case where no security has been furnished or as pointed out by Mr. E. Subramonia

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Aiyar where a debtor is trying to dispose of all his properties, the creditor must have the remedies to safeguard his rights. The question was discussed as to whether when the debtor chooses to pay his debts in instalments the creditor should have power to bring a suit for the recovery of his dues. It was said that the Act will automatically postpone the commencement of the cause of action in respect of the recovery of the debt. It was therefore provided that it does not take away the right of the creditor to sue for the recovery of the debt. For another reason where there is a doubt as to the amount, the debtor is given the right to put in an application to the Court. Where there is no doubt or dispute, the difficulty pointed out will not at all arise because a debtor who is anxious to pay 80 per cent of the debt and get a proper discharge will not allow the creditor to rush to the court and saddle him with further costs, 5 per cent. by way of Court fees, 5 per cent by way of Vakil's fees and various other incidental expenses. If a creditor were to go to a court it will saddle the debtor with a further 10 or 15 per cent. of the debt. If that is so, the debtor will immediately execute an acknowledgement. That will be sufficient to prevent the cause of action from being barred. It is in the interest of the debtor himself to do it. We have now provided that if the creditor refuses to receive the money due to him that amount shall be deposited with the court. In what manner the creditor's position will be worsened is not clear. It is not proper to deprive the Court altogether of the regular work now transacted. Therefore it is that the Select Committee made that recommendation. The amendment proposed will be inconsistent with the Select Committee's proposal. I therefore oppose it.

The amendment was put to vote and lost.

The question that clause 10 stands part of the Bill was put to vote and carried with the opposition of Mr. Sambasiva Aiyar.

The clause was added to the Bill.

DEPUTY PRESIDENT: The House will now adjourn and meet again tomorrow at 11 A. M.

The House adjourned at 10-15 P. M.

A. GUNAMONY,
Secretary to Sri Mulam Assembly.

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